IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
FTX TRADING LTD., et al.,[1]	)	Case No. 22-11068 (JTD)
Debtors.	)	(Jointly Administered)

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO MOTION OF THE UNITED STATES TRUSTEE FOR ENTRY OF AN ORDER DIRECTING THE APPOINTMENT OF AN EXAMINER

The Official Committee of Unsecured Creditors (the "Committee") appointed in the chapter 11 cases (the "Chapter 11 Cases") of the above-captioned debtors and debtors-in-possession (the "Debtors"), by and through its undersigned proposed counsel, hereby submits this objection (this "Objection") to the *Motion of the United States Trustee for Entry of an Order Directing the Appointment of an Examiner* [Docket No. 176] (the "Motion"), and in support thereof, respectfully states as follows:

PRELIMINARY STATEMENT[2]

1. These Chapter 11 Cases, all agree, require a thorough investigation into a variety of issues, including "the substantial and serious allegations of fraud, dishonesty, incompetence, misconduct, and mismanagement by the Debtors, the circumstances surrounding the Debtors' collapse, the apparent conversion of exchange customers' property, and whether colorable claims and

[1] The last four digits of FTX Trading Ltd.'s and Alameda Research LLC's tax identification number are 3288 and 4063 respectively. Due to the large number of debtor entities in these Chapter 11 Cases, a complete list of the Debtors and the last four digits of their federal tax identification number is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at https://cases.ra.kroll.com/FTX.

[2] Capitalized terms used in this Preliminary Statement that are not defined shall have the meanings ascribed to them later in the Objection or in the Motion, as applicable.

causes of action exist to remedy losses." Motion at 2. Indeed, the prepetition conduct of the Debtors and their former leaders are already under a microscope. No less than three government agencies have publicly announced and commenced investigations, and a congressional committee has begun its own independent investigation. Every day, major news publications are replete with information and analysis related to the Debtors' prepetition conduct and transactions. On the eve of filing these Chapter 11 Cases, all of the Debtors' senior management was terminated and replaced with an experienced, independent team led by John Ray – who has extensive expertise in forensic investigations – which team immediately began the necessary investigation and cooperation with the investigating governmental authorities. And, the U.S. Trustee appointed the nine-member Committee, which, immediately upon retaining professionals, began performing its statutory duty to "investigate the acts, conduct, assets, liabilities, and financial condition of the debtor . . . ." 11 U.S.C. § 1103(c)(2).

2. Accordingly, in these circumstances, the question the Court ultimately must address is not *whether* an investigation should take place, but rather, *who* should conduct the investigation. As set forth below, that party should not be an examiner – and should be the Debtors and Committee, which are already deeply enmeshed in that task. The U.S. Trustee's arguments in favor of appointing an examiner to start the investigation anew do not hold up under scrutiny. Relying upon only its own speculation, the U.S. Trustee contends that the examiner's findings "*likely* would enjoy broader acceptance and credibility" than any of the other investigations currently being conducted. Motion at 3 (emphasis added). But, that subjective opinion aside, the U.S. Trustee fails to explain how any stakeholder in these Chapter 11 Cases would benefit from the appointment of an examiner. The examiner will not benefit the unsecured creditors of the Debtors' estates, who will be forced to pay the examiner's bill and, as discussed below, are more than adequately represented by the Committee, which is statutorily bound, as a fiduciary of the Debtors' estates, to investigate the Debtors' prepetition

conduct. Nor would the examiner benefit the general public – whose interests are not directly relevant for purposes of appointment of an examiner, in any event – because the public is being ably served through investigations by the Department of Justice, the Securities Exchange Commission, the Commodity Futures Trading Commission, and the United States Congress.

3. In the unique circumstances of these Chapter 11 Cases, an examiner's investigation will delay progress and force the estates to incur significant incremental legal fees for a report with *no* evidentiary value. Notably, even after an examiner completes its investigation, the Committee will ultimately need to independently determine the merits of any claims and causes of action that may be asserted because the examiner cannot bring such claims. And, while previous mega bankruptcy cases, such as *Enron*, *Lehman, Residential Capital* and *Caesars Entertainment*, can guide the Court's understanding of the costs of an examiner – potentially as much as $50 to $100 million – these Chapter 11 Cases are readily distinguishable from those and other mega cases inasmuch as an examiner's report here is quite unlikely to expedite the conclusion of these cases. As discussed in greater detail below, this is not a case with multiple competing stakeholders in which negotiation or resolution might be aided by an examiner's report. Rather, these cases present a singular focus of discovering what transpired, so that the combined efforts of the Debtors and the Committee can maximize recoveries to all unsecured creditors.

4. Accordingly, because (contrary to the U.S. Trustee's position) appointment of an examiner is not mandatory, this Court should find that it is not in the best interests of the Debtors' estates or their creditors to appoint an examiner here. The Debtors' current management and the Committee have already begun the very same investigation that would be conducted by an examiner. The Motion should be denied.

BACKGROUND

A. The Chapter 11 Cases and the Debtors' Investigation

5. On November 11, 2022, Samuel Bankman-Fried resigned from his position as chief executive of the Debtors, at which time John Ray was appointed to fill the position. *Declaration of John J. Ray III in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 24] (the "Ray Declaration") at ¶ 44. On that same date, and on November 14, 2022 (as applicable, the "Petition Date"), the Debtors filed with the Court voluntary petitions for relief under title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq*. (the "Bankruptcy Code").

6. In addition to Mr. Ray's appointment as CEO, new directors were appointed at new "silos" for each of the primary companies in the FTX group.[3] *See* Ray Declaration at ¶ 47. Each of the new directors are independent and have no connection to the Debtors' prepetition conduct. Under the direction of Mr. Ray and the Debtors' new management, the Debtors have been conducting an investigation into the downfall of the FTX enterprise and the prepetition fraudulent activity that unfortunately took place. Assisting the Debtors are able counsel and financial professionals, each of whom has extensive experience conducting forensic, financial and cryptocurrency related investigations in connection with the bankruptcy process.

7. Nevertheless, well prior to its appointment of the Committee, the U.S. Trustee filed the Motion on December 1, 2022, seeking an order appointing an examiner to conduct an independent investigation into the "allegations of fraud, dishonesty, misconduct, and mismanagement by the Debtors, the circumstances surrounding the Debtors' collapse, the apparent conversion of exchange

[3] The new directors include the Honorable Joseph J. Farnan as a Director of the Dotcom Silo and Chairman of the Board, Mitchell I. Sonkin as the Director of the WRS Silo, Matthew R. Rosenberg as the Director of the Alameda Silo, Rishi Jain as the Director of the Ventures Silo, and Matthew A. Doheny also as a Director of the Dotcom Silo. *See* Ray Declaration at ¶ 47.

customers' property, and whether colorable claims and causes of action exist to remedy losses." Motion at 2.[4]

B. The Committee's Investigation

8. On December 20, 2022, the U.S. Trustee appointed the Committee pursuant to section 1102(a)(1) of the Bankruptcy Code. *See Amended Notice of Appointment of Committee of Unsecured Creditors* [Docket No. 261]. The U.S. Trustee's appointment was not done haphazardly. As acknowledged by counsel to the U.S. Trustee, the trustee received a "tremendous response" from people "located all over the world" who wanted to serve on the Committee. *See In re FTX Trading, Ltd.*, Dec. 14 Hr'g. Tr. at 13:4-10, annexed hereto as Ex. A.[5] From that group of creditors, the U.S. Trustee selected nine and empowered them to act as fiduciaries for all of the estates' unsecured creditors. The tremendous response received by the U.S. Trustee is not surprising. Unlike typical mega bankruptcy cases, which have complex and fully encumbered capital structures and warring factions of stakeholders, the vast majority of the creditors in these cases are similarly situated customers of the Debtors. Accordingly, not only does the Committee act as a fiduciary for all of the Debtors' unsecured creditors, it also practically, here, acts for the vast majority of the Debtors' stakeholders.

9. Upon its formation, the Committee retained sophisticated advisors, including Paul Hastings LLP and Young Conaway Stargatt & Taylor, LLP as legal counsel, Jefferies Group, LLC as investment banker, and FTI Consulting, Inc. as financial advisor (collectively, the "Committee

[4] Both the state of Wisconsin and the Vermont Department of Financial Regulation have since filed joinders to the Motion. *See The State of Wisconsin's Joinder to the Motion of the United States Trustee for Entry of an Order Directing the Appointment of an Examiner* [Docket No. 263], *The Vermont Department of Financial Regulation's Joinder to Motion of the United States Trustee for Entry of an Order Directing the Appointment of an Examiner* [Docket No. 339].

[5] Relevant excerpts of transcripts cited herein are attached as **Exhibits A - K** to the Objection. Full transcripts are available upon request.

Professionals"). At the direction of the Committee, in addition to working to help stabilize the operational side of these Chapter 11 Cases, the Committee Professionals immediately began coordinating with the Debtors to investigate the facts and potential sources of recovery for unsecured creditors. To date, the Committee Professionals are efficiently reviewing over 55,000 documents received from the Debtors, are filing a joint application with the Debtors for authority to serve subpoenas to obtain information under Bankruptcy Rule 2004 and have been gathering information concerning myriad pertinent issues, including securing and investigating the Digital Assets previously and currently held on the FTX.us and FTX.com exchanges.

10. The Debtors and Committee plan to continue to work together and allocate resources efficiently in order to avoid duplication of efforts, to, among many other things, perform a forensic analysis of the relevant Debtor silos and the Debtors' assets and liabilities, conduct due diligence on the policies and procedures that allowed the fraud to occur, analyze the value received by the Debtors for the scores of prepetition transactions they entered into, assess the potential liability of the Debtors' equity holders, management, employees and their families, auditors, consultants, advisors and other third parties, and track every last dollar of missing funds.

C. The Parallel Proceedings and Public Investigations

11. In addition to the investigations currently being conducted by the Debtors and the Committee, numerous other proceedings and investigations are also substantially underway. To date, several governmental entities are pursuing civil and criminal proceedings against the Debtors' founders and prepetition management and certain Debtor entities, including *United States v. Bankman-Fried*, Case No. 22-cr-673 (S.D.N.Y.) (eight count indictment on claims of Wire Fraud, Conspiracy to Commit Wire Fraud, Conspiracy to Commit Money Laundering, Conspiracy to Commit Campaign Finance Violations, Conspiracy to Commit Securities, and Conspiracy to Commit

Commodities Fraud); *SEC v. Samuel Bankman-Fried*, Case No. 22-cv-10501(S.D.N.Y.) (alleging violations of section 17(a) of the Securities Act of 1933 and section 10(b) of the Securities Exchange Act of 1934); *SEC v. Ellison, Wang*, Case No. 1:22-cv-10794 (S.D.N.Y.) (alleging violations of section 17(a) of the Securities Act of 1933 and section 10(b) of the Securities Exchange Act of 1934); *CFTC v. Bankman-Fried, FTX Trading LTD, and Alameda Research LLC.*, Case No. 22-cv-10503 (S.D.N.Y.) (alleging claims of Fraud and Fraudulent Misstatements of Material Fact and Material Omissions). In connection with the criminal complaint brought by the United States, both Caroline Ellison (formerly CEO of Debtor Alameda) and Gary Wang (co-founder and 10% equity owner of FTX.com) have already plead guilty to Conspiracy to Commit Wire Fraud on Customers and Lenders, Wire Fraud on Customers and Lenders, Conspiracy to Commit Commodities Fraud, Conspiracy to Commit Securities Fraud and Conspiracy to Commit Money Laundering. *See* Case No. 22-cr-673 [ECF Nos. 6-9, 20, 22].[6]

OBJECTION

12. In support of its Motion, the U.S. Trustee argues that investigating "the alleged conversion by the FTX Trading arm of the Debtors of $10 billion of customers' property to lend to its affiliate Alameda . . . is unquestionably in the interests of the Debtors' creditors and other interests of the estates." Motion at ¶ 36. The Committee completely agrees. The Debtors' prepetition fraud must be investigated. But that does not mean the appointment of an examiner is necessary or appropriate. For the reasons set forth below, the U.S. Trustee has not satisfied its evidentiary burden to demonstrate that an examiner should be appointed here. *See In re Dewey & LeBoeuf LLP*, 478 B.R.

[6] Indeed, the detailed charges against and allocutions by Wang and, especially, Ellison, demonstrate the advanced stage of the Government's investigation into their respective criminal activities.

627, 636 (Bankr. S.D.N.Y. 2012) ("The moving party has the burden to prove that an examiner should be appointed."). Accordingly, the Motion should be denied.

I. The U.S. Trustee has Not Shown that Appointment of an Examiner is in the Best Interests of the Debtors' Estates or their Creditors

13. The U.S. Trustee argues that appointment of an examiner is in the "best interests of the Debtors' estates, their creditors, and equity security holders." Motion at ¶ 35. Not so. Not only would an examiner *not* benefit any of the Debtors' true stakeholders (their unsecured creditors), but the appointment of an examiner would be an inefficient and costly waste of estate resources and will only serve to duplicate the investigation that the Debtors and the Committee (the statutory and neutral fiduciary appointed by the U.S. Trustee itself) have already been conducting.

a. The Debtors and the Committee Should Conduct the Investigation

14. Congress, through section 1103 of the Bankruptcy Code, provided the Committee with broad powers to "investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business, and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan." 11 U.S.C. § 1103(c)(2); 7 Collier on Bankruptcy ¶ 1103.05 (16th ed. 2022) ("The investigative authority granted to a committee is extremely broad and a committee may undertake whatever investigation is appropriate to enable it to fulfill its duty to monitor the operations of the debtor and participate in formulation of a plan.").[7]

[7] As set forth more fully in the *Statement of Official Committee of Unsecured Creditors Regarding U.S. Trustee's Objections to Retention of Certain Professionals of Debtors* [Docket No. 508] (the "Committee Statement"), the interplay between sections 1106 and 1107 of the Bankruptcy Code does not preclude the Debtors from investigating their own misconduct, nor does it militate in favor of the appointment of an examiner here. *See* Committee Statement at ¶¶ 2-4 (citing *In re Johnson*, 546 B.R. 83, 163 (Bankr. S.D. Ohio 2016) (recognizing that section 1107's exemption does not mean "anything more than that a debtor in possession is *not required* to 'investigate itself'") (emphasis added); *In re Curry & Sorensen, Inc*., 57 B.R. 824, 828 (B.A.P. 9th Cir. 1986) ("While pursuant to Section 1107(a) of the Code, a debtor in possession is *not required* to investigate and report under Sections 1106(a)(3) and (4), the debtor's directors bear essentially the same *fiduciary* obligation to creditors and shareholders as would a trustee for a debtor out of possession.") (first emphasis added)). Indeed, when sections 1103(c)(2), 1106(a)(3) and 1107(a) are read together, the natural reading is that the Debtors and/or the Committee can fulfill the investigative function that is exempted from the *duties* (not powers) of the debtor in possession. To give credence to the contrary interpretation

15. Consistent with its statutory duty, the Committee is already in the process of conducting the necessary investigation in order to not only explain what transpired at the Debtors, but to determine, as estate fiduciaries, how to maximize recoveries for the Debtors' customers and other unsecured creditors. Any appointment of an examiner would be duplicative of the investigation already taking place and would restart the investigation anew, wasting the momentum that the Debtors' new management achieved in the first months of these Chapter 11 Cases, and which the Committee has supplemented since its inception. *See In re Am. Home Mortg. Holdings, Inc*., Case No. 07-11047, Hr'g Tr. at 77:2-8, annexed hereto as Ex. B (Bankr. D. Del. Oct. 31, 2007) (Sontchi, J.) (noting that because there were already ongoing investigations, the Court did not "think . . . there would be anything to be gained by appointing an examiner . . .").

16. The U.S. Trustee is simply wrong in contending, as applied here, that a creditors' committee (including this Committee) is not a neutral party because it is an advocate for general unsecured creditors and that an examiner is needed to be independent. *See* Motion at ¶ 41 (citing law review article to support contention that "the economic predispositions of debtors in possession and committees are an important and intentional part of the Code's structure, but those predispositions prevent their neutrality"). Although the U.S. Trustee's arguments *might* have some level of merit in a typical mega chapter 11 case – where the Committee represents but one constituency in a complex capital structure – such concerns are completely inapplicable in these Chapter 11 Cases. Here, as will be shown (to the extent disputed) at the hearing on the Motion, the vast majority (if not all) of the claims against the Debtors' estates are those of unsecured creditors. Therefore, the Committee is in the best position – and has a fiduciary responsibility – to represent the *entire* body of the Debtors'

propounded by the U.S. Trustee would lead to the absurd result of a trustee or examiner being appointed in *every* case under chapter 11 of the Bankruptcy Code.

creditors. The concern raised by the U.S. Trustee that certain groups of creditors may have potentially divergent interests from those of the Committee's constituents (*see* Motion at ¶ 41) does not exist here. *See In re Adelphia Communications*, Case No. 02-41729, Hr'g Tr. 7.63:8-7.64:4, annexed hereto as Ex. C (Bankr. S.D.N.Y. Feb. 6, 2006) (declining to appoint an examiner, noting that the creditors' committee was not conflicted in a manner that would necessitate the appointment of an examiner). In fact, the Committee's vested interest in maximizing recoveries for unsecured creditors actually buttresses the need for the Committee, with the Debtors, to conduct the investigation – not an examiner. In satisfying the Committee's fiduciary duty to the creditors of these estates, it will focus its efforts on investigating for the ultimate purpose of assessing claims and causes of action that have the greatest likelihood of inuring to the benefit of such creditors, rather than having an examiner drain resources of the estates investigating matters that, in the end, may not enhance the Debtors' estates (and that an examiner cannot prosecute, in any event).[8]

b. An Examiner Will Not Benefit the Debtors' Stakeholders

17. The U.S. Trustee contends in its Motion that an examiner is necessary to examine the "unanswered questions" behind the Debtors' alleged prepetition misconduct, which "are not merely about where the money flowed or who can sue whom," but relating to "the wider implications that FTX's collapse may have for the crypto industry." Motion at ¶ 42-43. First, "where the money flowed" and "who can sue whom" are *precisely* the questions upon which an investigation should focus in order to maximize the value of these estates. Second, the wider implications that FTX's collapse may have for the crypto industry are certainly of interest, but are not within the scope of the

[8] Certain parties have raised concerns regarding the neutrality of the Debtors' new management and professionals, which concerns were rejected by the Court in the related context of the Debtors' professionals' retentions. Regardless, the Committee's role in the investigation of the Debtors' prepetition affairs ensures an investigation without any appearance of conflict or bias. The Committee is perfectly situated to conduct such neutral investigation itself and further act as a check on the investigative functions being conducted by the Debtors and their professionals in this regard.

investigative duties described in the Bankruptcy Code and are not costs that should be unnecessarily borne by the Debtors' estates.

18. The Motion advocates for a limitless investigation that may not benefit creditors' recoveries, consistent with the U.S. Trustee's desire to serve the public interest through an examiner's investigation into certain systemic issues in the crypto industry. Motion at ¶¶ 42-43. Such an investigation is already being conducted by a number of government agencies, including the Securities Exchange Commission, the Department of Justice and the Commodity Futures Trading Commission and a congressional committee – not to mention journalists worldwide. Thus, the public is being served by those investigations without the need for the creditors of these Debtors to fund, through their potential recoveries, an investigation that does not have as its primary goal increasing those very recoveries. *See In re Washington Mut., Inc*., *et al.*, Case No. 08-12229, Hr'g. Tr. at 98:12-100:6, annexed hereto as Ex. D (Bankr. D. Del. May 5, 2010) (Walrath, J.) (denying the appointment of an examiner where the creditor committee is "fully able to conduct the investigation" and the "debtor has been investigated to death" for both criminal and civil proceedings, and noting that it would be "[un]fair to the creditors in this case to be saddled with the cost of an investigation into systematic problems, that would only benefit future parties but not benefit the parties in this case.").

19. Indeed, the U.S. Trustee sidesteps that it is the unsecured creditors that will pay for the examiner's investigation and report. Budgets or not, an appointed examiner will surely need to retain outside counsel, forensic accountants and financial advisors, among a slew of other professionals, all of whom (as will be proven at the hearing on the Motion), would be charging the estates millions of dollars in fees and expenses while just trying to catch up to where the investigation to date is already. The Debtors and the Committee have both already retained such professionals and

any work done by additional professionals retained by an examiner would be duplicative of work already done by the Debtors' and Committee's experts.[9]

20. Finally, there are serious practical concerns that weigh strongly against an examiner conducting an investigation. First, an examiner does not adjudicate, but merely reports. Although an examiner's report may "paint[] a picture, his or her image of what happened in the case . . . and provide[] context for a debate," such report is ultimately hearsay, limiting its evidentiary value. *In re FiberMark, Inc*., 339 B.R. 321, 325 (Bankr. D. Vt. 2006) ("It is the duty of the parties to formulate a fuller version of the debate using the rules of evidence."). And while an examiner may be able to recommend claims or causes of action based on the findings in its report, an examiner itself is not able to bring such claims because it lacks standing to do so. *See Off. Comm. of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v. Chinery*, 330 F.3d 548, 578 (3d Cir. 2003) ("One concern is that, like a trustee, an examiner would incur direct costs through its fees, so to that extent this remedy is inferior to the alternative of derivative suit by a creditors' committee. The more serious problem, however, is that it is less than obvious that § 1106(b) actually does permit examiners to initiate actions on the debtor's behalf. . . . Critically, [sections 1106(a)(3)-(4)] permit only investigating and reporting on that investigation – they stop far short of authorizing examiners to litigate based on their findings.").

21. Indeed, although "painting a picture," as suggested by the *FiberMark* court (*see* 339 B.R. at 325), may be of some benefit in cases in which there are numerous stakeholders, each litigating and negotiating from its own unique position, that situation is not extant here. A non-binding

[9] Pursuant to the proposed order that was filed with the Motion, an examiner would have fifteen days following the appointment to file a proposed work plan and cost estimate, after which parties will have ten days to object, and then, only after obtaining approval from the Court, the examiner is to meet and confer with the Debtors and the Committee regarding its investigation. The practical effect of all of this is that an examiner would not even *start* an investigation, at best, until mid-March – roughly 120 days after the Debtors and 75 days after the Committee began investigating the Debtors' affairs.

examiner's report that identifies certain facts and offers opinions on pertinent legal issues may influence the playing field in situations where there are competing stakeholders with various positions. By way of example, the examiner's report in the *Caesars Entertainment* bankruptcy cases helped identify facts and claims against a recalcitrant equity sponsor, ultimately resulting in a global settlement. *See In re Caesars Entertainment Operating Company, Inc., et al.*, No. 15-01145 (Bankr. N.D. Ill.) *Final Report of Examiner, Richard J. Davis* [Docket No. 3720] at 1-3, 6-11. Notably, the *Caesars* debtors had complicated capital structures including various tranches of secured debt and competing claims to assets as a result of a series of prepetition financial transactions implemented by the equity sponsor. *See id.* at 98-105. Here, to the contrary, there are only the unsecured creditors of the various Debtors that are seeking to maximize their recoveries from the estates, and, as a result, the possible value to be added by having an examiner paint a picture is greatly diminished and will not aid in expediting these cases.

22. Because the Debtors and Committee are already in the process of conducting an investigation and, significantly, because any investigation conducted by an examiner will still have to be overseen and subject to diligence by the Debtors and the Committee – the parties who will ultimately have standing and need to make the decision whether any claims or causes of action should be prosecuted – an examiner investigation would be redundant and a waste of estate resources. The appointment of an examiner is simply not necessary here.

II. Appointment of an Examiner is Neither Mandatory Nor Appropriate

23. The U.S. Trustee also asserts that appointment of an examiner is mandatory because the criteria set forth in section 1104(c)(2) of the Bankruptcy Code has been met. Motion at § IV.A. Although the U.S. Trustee in the Motion collects and relies upon authority to support its position from various courts outside of this Court and the Third Circuit, it fails to acknowledge the contrary authority of this Court. This Court has repeatedly held that an examiner's appointment is not mandatory simply

because the chapter 11 case meets the $5 million debt threshold set forth in the statute – and has said so in the context of these Chapter 11 Cases. *See In re FTX Trading, Ltd.*, Jan. 11, 2023 Hr'g. Tr. at 167:18-23, annexed hereto as Ex. E ("I think you're familiar with my position on the mandatory nature of the appointment of an examiner . . . For the record, I do not believe it's mandatory."); *see also In re CRED Inc., et al.* No. 20-12836, Hr'g. Tr. at 97:12-18, annexed hereto as Ex. F (Bankr. D. Del. December 18, 2020) (Dorsey, J.) ("I disagree with the UST's position that the appointment of an examiner is mandatory. The language of 1104(c) provides the Court with some discretion. It says that the Court shall appoint an examiner to conduct such an investigation of the debtor as is appropriate. So the question becomes: Is it appropriate in this case?").[10]

24. Rather, the appropriate inquiry is whether an examiner has an *appropriate* investigation to pursue. *See In re EV Energy Partners*, No. 18-10814, Hr'g. Tr. at 196:22-25, annexed hereto as Ex. G (Bankr. D. Del. May 16, 2018) (Sontchi, J.) ("I don't believe, and I've said this in numerous cases and my colleagues have said it, that it's just mandatory to appoint an examiner, as long as someone asks for one."); *In re IdleAire Techs. Corp.*, No. 08-10960, Hr'g. Tr. at 45:11-15, annexed hereto as Ex. H (Bankr. D. Del. June 13, 2008) (Gross, J.) ("I don't think that [§ 1104(c)(2)] is mandatory based upon my reading of the legislative history . . . the language of the statute itself, and particularly, the as appropriate clause."); *In re Visteon Corporation, et al*., No. 09-11786, Hr'g. Tr. at 170:16-20, annexed hereto as Ex. I (Bankr. D. Del. May 12, 2010) (Sontchi, J.) ("[I]t would be

[10] This Court in *CRED* followed the reasoning of Judge Glenn in *In re Residential Capital, LLC*, which held that a bankruptcy court has discretion to not appoint an examiner in factual circumstances where it is not appropriate. 474 B.R. 112, 118 n. 6 (Bankr. S.D.N.Y. 2012) ("For example, an examiner investigation might not be appropriate in cases where the SEC has completed a lengthy investigation and commenced an enforcement action laying out the specific misconduct of the debtor's prior management, or *where the company or its senior managers were indicted*, or where the creditors committee had already completed and reported on a lengthy investigation of its own.") (emphasis added). Here, where there have already been multiple indictments of the Debtors' prepetition management and multiple criminal investigations are in progress (in addition to the investigations by the Debtors' new management and the Committee), an investigation by an examiner is simply not appropriate.

an absurd result to find that in every case where the financial criteria is met and a party-in-interests asks, the Court must appoint an examiner. There has to be an appropriate investigation that needs to be done.").

25. Where, as here, an investigation is already being conducted by the Debtors' newly-appointed and disinterested management and the Committee, an examiner's investigation is not only inappropriate, but would be "futile." *See In re Magna Entm't Corp*., No. 09-10720, Hr'g. Tr. at 13:4-14:14, annexed hereto as Ex. J (Bankr. D. Del. Apr. 28, 2010) (Walrath, J.) ("Since all of the roles that an Examiner would play in this case have already been fulfilled [by the creditor's committee], I find it's a futile act and will not appoint an examiner."); *In re IdleAire Techs. Corp.*,Hr'g. Tr. at 45:2-8 (Bankr. D. Del. June 13, 2008) (Gross, J.) (declining to appoint an examiner under § 1104(c)(2) when the "[creditor's] Committee's doing a very, very capable job."); *In re ACandS, Inc.*, No. 02-12687, Hr'g. Tr. at 130:18-131:5, annexed hereto as Ex. K (Bankr. D. Del. Nov. 18, 2002) (Newsome, J.) (denying an investigation by an examiner because it was an "utter and complete waste of money and well as time" when other parties were already investigating "the very same set of transactions."). The Debtors and Committee should continue their investigation, without burdening the estates with the additional fees and costs of an examiner, especially because there can be no allegation by the U.S. Trustee that the Committee (let alone the Debtors) is not an impartial and capable fiduciary to carry out this task.[11]

[11] In the event that this Court determines to appoint an examiner, the Committee reserves the right and opportunity to be heard with respect to the examiner's investigation, including its scope, timeframe, budget and the Committee's involvement in such investigation.

CONCLUSION

WHEREFORE the Committee requests that this Court deny the Motion and grant such other and further relief as the Court finds just and appropriate.

Dated: January 25, 2023
Wilmington, Delaware

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Proposed Counsel to the Official Committee of Unsecured Creditors

Exhibit A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	. Chapter 11
	. Case No. 22-11068 (JTD)
FTX TRADING LTD., *et al.*,	.
	.
	. Courtroom No. 5
	. 824 Market Street
Debtors.	. Wilmington, Delaware 19801
	.
	. Wednesday, December 14, 2022
. . . . .	. 11:00 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE JOHN T. DORSEY
CHIEF UNITED STATES BANKRUPTCY JUDGE

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devolve. I agree with Your Honor, there has got to be a way the professionals can work this out without getting into the kind of accusations that are flying.

THE COURT: All right.

MR. SHORE: To be clear, we filed the pleading this morning, Your Honor. It attaches a declaration that Mr. Ray could not have seen, nor counsel could have seen, which belies this notion that what the commission was doing was working with SBF. In fact, the email they attach where SBF says --

THE COURT: Well, I'm not going to get into the merits of it at this point, Mr. Shore. We will talk about that on the 6th if we get to it.

MR. SHORE: Okay. But recognize --

THE COURT: Hold on, Mr. Shore. I want to move on.

MR. SHORE: Sure.

THE COURT: Let's talk about the 16th. We have the motion objecting to the seal by the U.S. Trustee. Is the U.S. Trustee on the line, someone from the U.S. Trustee?

MS. SARKESSIAN: Yes, Your Honor. Juliet Sarkessian for the U.S. Trustee.

THE COURT: Ms. Sarkessian, I have some concerns about that hearing going forward on Friday from a number of perspectives.

Number one, the motion implicates individual

creditors and there is no creditor's committee yet. I think the creditor's committee would want to weigh-in on that motion. Do we know yet when the committee will be formed?

MS. SARKESSIAN: Your Honor, first, I -- maybe apology is not the right word, but we had hopes to have a committee formed by this time. We had a tremendous response and people are located all over the world. Unfortunately it becomes a little bit difficult when people are in very different time zones, and there is a lot of complicated information, as I'm sure Your Honor can imagine.

So we are moving as expeditiously as possible. You know, and we hope to be filing a notice of appointment very soon. I can't say anything more than that other than very soon.

I do have concerns. You know, they, obviously, have to choose counsel. So, you know, I think there certainly is a reasonable possibility that they might not have counsel by Friday or maybe they have it by Thursday, but there is not, you know, as much time as one would like for them to have.

So I mean Your Honor certainly brings up a valid concern. We had hoped it would be different. We had hoped that we would have a committee formed by this time, but the reality is due to circumstances outside of our control it has not yet happened.

THE COURT: Okay. I also noticed the Trustee also objected to a consolidated creditor matrix on similar grounds on the redaction of the creditor information, I believe.

MS. SARKESSIAN: Your Honor, that was the motion I was talking about.

THE COURT: Oh, okay.

MS. SARKESSIAN: So there was two motions, seal motions; one of them relates to the indemnification/exculpation motion and I will allow the debtor to address that, but understanding, based on discussions as well as the agenda, is that they are agreeing for that to be unsealed.

THE COURT: Okay.

MS. SARKESSIAN: With respect to the other motion relates to the creditor matrix, schedules and statements, top 50 list, and pretty much any document in the case that would have names or addresses of creditors or customer/creditors.

THE COURT: Okay.

MS. SARKESSIAN: So that is the motion I was discussing that we did file an objection to.

THE COURT: Okay.

MS. SARKESSIAN: We have not technically filed an objection to the other motion because they said, effectively, they're -- I don't know if withdrawal is the right word, but they're not going to pursue that relief on a final basis.

Exhibit B

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
	.	
AMERICAN HOME MORTGAGE	.	Case No. 07-11047(CSS)
HOLDINGS, INC., a Delaware	.	(Jointly Administered)
corporation, *et al.*,	.	
	.	Oct. 31, 2007 (10:09 a.m.)
Debtors.	.	(Wilmington)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY COURT JUDGE

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doesn't take a ton of time. So - and I'm sensitive to this issue and I know the Office of the United States Trustee is sensitive, and I understand their position in connection with shall meaning shall, and I think that's true, but I think in order for - I would draw a bit of a distinction between what Judge Walsh and Judge Balick have appeared to rule which is simply that it's a best interest test. I don't think that's correct. The best interest is in ©)(1). It's not in ©)(2). I think the financial criteria are important, and obviously, they're met in this case, but that's only one piece of the puzzle, and the other piece of the puzzle is that there has to be an investigation to perform that's appropriate. I think the cases cited in the Colliers treatise discuss that. I think that's a more nuance approach than sort of saying it is what it is, and if you cry "examiner" in a crowded case, you get one. In this case, reading the motion carefully, I really didn't see a request for any investigation. There was a complaint about practices. A 2004 request for information about individual loan files that we've already discussed, but no real articulation of what it was that the movants wanted to be investigated by an examiner, and even if one were to sort of assume, okay, they want someone to examine the debtors' practices in connection with loan origination and servicing that may be violations of state or federal law, I don't think that at this time giving someone sort of carte

blanche to look into that issue will be appropriate. Again, the Committee is extremely involved in this case. There are ongoing investigations, possibly by other governmental entities. There's obviously a lot of issues going on in Congress right now in connection with these types of practices that allegedly the debtor participated in, so I'm not - I don't think in this case there would be anything to be gained by appointing an examiner and giving that examiner a budget and saying, I'd like you to investigate the debtors' loan origination and servicing policies in connection with whether it may have violated state or federal law. I think that's asking for a $20 million report, and I'm not sure what it would accomplish. So, with regard to the temporal requirement, again, I'm not - I understand there are those cases. I think it would be more appropriate to deny the motion without prejudice than to sort of say, Okay, I'm granting the motion, but I'm not at this point going to appoint an examiner. Again, I think that's just tantamount to denying the motion. So, I'm going to do that. I'm going to deny the motion without prejudice to be brought again if new facts arise or if the status of the case changes. And just an aside, I mean, I don't know what this case ultimately ends up with, whether we end up in with a liquidating plan, whether we convert to 7. I mean, I know - I'm sure there are discussions that I'm very happy to not be participating in

that may be focused on that, but my instincts tell me that to the extent there's some real issues out here, that they are going to be investigated by somebody in the future, and if turns out that that's not the case, I'm certainly open to hearing someone ask me to appoint someone to do that on behalf of the debtors' estate at the appropriate time. All right? Are there any other issues? I'm going to - So, I think we've addressed the issues raised by - Oh, there was the issue of the injunction. I think that's very easily dealt with. You can't get an injunction by filing a motion. I've said it many times before. You have to file an adversary proceeding under Rule 7001, and you need to meet the criteria to get an injunction and you have to support it by evidence, and without that, I'll deny that. So I'm going to deny - For the foregoing reasons, I'm going to deny all three motions, and I'd ask the debtors to submit a form of order, please, under certification of counsel.

MR. BRADY: Your Honor, we will prepare forms of order for each motion.

THE COURT: I think that turns me to cash collateral. I don't have those papers. I know they came over yesterday in connection with the motion to shorten, which I granted, but I didn't actually save them, so -

MR. WAITE: Your Honor, I can hand up - I have a copy of the motion and a copy of the order; is that helpful

Exhibit C

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:	.	Case No. 02-41729
ADELPHIA COMMUNICATIONS,	.	New York, New York
	.	Monday, February 6, 2006
Debtors.	.	5:02 p.m.

. . . . . .

TRANSCRIPT OF HEARING ON STIPULATION/MOTION
BEFORE THE HONORABLE ROBERT E. GERBER
UNITED STATES BANKRUPTCY JUDGE

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I N D E X

appointment of an examiner on a volitional basis, I would not do so here. The appointment of an examiner is sometimes very useful for a bankruptcy case. In other cases, it is not and can cost the estate millions of dollars that would be better spent on creditor recoveries.

In Refco every party with a financial stake in the case opposed the appointment of an examiner, but the U.S. Trustee in that region wanted one and on appeal the Sixth Circuit ruled that the appointment of an examiner was mandatory, notwithstanding the creditors' wishes. The examiner cost the estate about $2 million.

Here the amount budgeted for the examiner appointment is $350,000, an amount which, while stated as a cap, is an amount that I fear plainly will be reached, if not also sought to be exceeded. That $350,000, even if not enlarged further, may exceed by tens of thousands or hundreds of thousands of dollars the incremental amount, if any, that use of Amici and Echelon cost the debtors' estates.

BSF has a pending fee application that will be opposed by a number of parties in this case who could conduct the necessary discovery at least as well as an examiner. They probably could do it better and cheaper, as they know this case very well. They have an economic interest in spending their time wisely. They have a head start on knowing what BSF was asked to do and did and what disclosures

it made and didn't make and have an understanding from three-and-a-half years of experience what the dynamics of this case are. And at least some have indicated that they will wish to actively participate in the investigation, whether or not an examiner is appointed and it is fair to assume that they will feel the same when it comes to opposing the BSF fee application.

Also, do not believe that any of the debtors, the creditors' committee, or the fee committee are conflicted in a way that would necessitate the appointment of an examiner to get out all of the true facts. They have all of the incentive they need to litigate vigorously against BSF and BSF has all the incentive it needs to litigate vigorously to clear its name. That is what the adversary process is all about.

We do not have a situation here, as in Leslie Fay, where a party would be investigating itself. If the debtors, creditors' committee, and fee committee don't do the necessary inquiry, I feel comfortable that BSF will.

At least here we've already had a contested fee application before the Court. It is not clear to me what purpose the appointment of an examiner would accomplish, other than taking depositions that the parties in this case could take themselves and will want to sit in on anyway. Examiners' views are not infrequently welcomed by courts, but

they are not a substitute for the decisions of courts, especially on matters of law or on matters where parties might have different views that would be the grist for a judicial decision.

Federal Rule of Bankruptcy Procedure 9031, captioned "Masters not Authorized," expressly provides that FRCP 53 does not apply in cases under the code and, hence, prohibits the appointment by bankruptcy judges of special masters. Legal decisions and factual findings on any disputed facts would be the province of the Court and not an examiner.

If, as I would examine -- if, as I would expect, one or more of the creditors' committee, the fee committee, the debtors, the U.S. Trustee's office, or BSF wish to weigh in on the allowability of BSF's fees, after we know all of the facts, it's hard for me to envision a scenario under which I would deny any of them the opportunity to do so. And such efforts on their part to engage in the rights that they blatantly have in that regard would overlap with the examiner's inquiry if it were to have been authorized in material respects.

Frankly, folks, the history of examiners in this district and elsewhere has made me wary of appointing them when other means could skin the cat. This case already has enough fiduciaries. It does not need to spend another $350,000 to accomplish ends that already can be easily

addressed in what I believe to be a much more efficient and economical manner.

As I have said in other contexts, litigation needs and concerns cannot be swept under the rug, but they need to be addressed in the most efficient and thoughtful way possible. For the foregoing reasons, approval of the stipulation is denied and dealing with stipulation to the motion for the appointment of an examiner to investigate the subject matter stated therein, the motion is denied.

In the alternative, the creditors' committee and the debtors request authority to investigate by means of Rule 2004 or through the discovery that's granted in connection with any contested manner as BSF's spending fee application plainly is. That authority is granted to the extent it is necessary. All interested parties already have the right to engage in any needed deposition or document discovery under Bankruptcy Rules 9014 at Paragraph 8 in Footnote 2 of my Case Management Order No. 3, entered back on July 26th, 2004.

BSF cross-motion for appointment of a mediator is denied without prejudice. It is premature to talk about the resolution of the fee issues, the disclosure issues, or any related issues until the parties in this case know all of the facts and I know all of the facts.

I'm so ordering the record. Any party who wants a written order from which it can take an appeal and move for

Exhibit D

UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

Case No. 08-12229 (MFW)

- -x

In the Matter of:

WASHINGTON MUTUAL, INC., et al.,

Debtors.

- -x

United States Bankruptcy Court

824 North Market Street

Wilmington, Delaware

May 5, 2010

10:30 AM

B E F O R E:

HON. MARY F. WALRATH

U.S. BANKRUPTCY JUDGE

ECR OPERATOR: BRANDON MCCARTHY

HEARING re Debtors' Objection to Proof of Claim Filed by Mellon Investor Services LLC

HEARING re Objection to Proof of Claim No. 201 Filed by Scott **A. Burr**

HEARING re Debtors' Twenty-Fourth Omnibus (Substantive Objection to Claims

HEARING re Debtors' Twenty-Fifth Omnibus (Non-Substantive) Objection to Claims

HEARING re Debtors' (Non-Substantive) Objection to Claim Number 574 Filed by Frank Whitemaine

HEARING re Debtors' Thirty-First Omnibus (Non-Substantive) Objection to Claims

HEARING re Supplemental Motion of Debtors Pursuant to Section 362 of the Bankruptcy Code for Order Modifying Automatic Stay to Allow Advancement Under Insurance Policies

HEARING re Debtors' Objection to Proof of Claim Filed by Egencia LLC

HEARING re Debtors' Twenty-Eighth Omnibus (Substantive) Objection to Claims Filed by Claimants Gregory Bushansky, Dana Marra, Marina Ware, Ontario Teachers' Pension Plan Board and Brockton Contributory Retirement System (Claim Nos. 999, 1001 1002, 1003, 2759, 2761 and 2763) Pursuant to Section 510(b) of the Bankruptcy Code

HEARING re Debtors' Thirtieth Omnibus (Substantive) Objection to Claims Filed by Claimants Walden Management Co. Pension Plan, Metzler Investment and South Ferry LP #2 (Claim Nos. 2808, 2809, 3087 and 3448) Pursuant to Section 510(b) of the Bankruptcy Code

HEARING re Debtors' Twenty-First Omnibus (Substantive) Objection to Claims

HEARING re Debtors' Twenty-Sixth Omnibus (Substantive) Objection to Proofs of Claim of Jay Agnes (Claim No. 2588) and R.S. Bassman (Claim No. 3666)

HEARING re Debtors' Twenty-Seventh Omnibus (Substantive) Objection to Claims (Claim Nos. 2889, 2890, 2891, 2893, 2894, 2896, 2897, 2898 and 2900)

HEARING re Debtors' Objection to Proof of Claim Filed by Michael Scott Blomquist (Claim No. 3220)

HEARING re Application of the Debtors Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Rule 2014(a) and Local Rule 2014-1 for Order Authorizing the Retention of Blackstone Advisory Partners L.P. as Financial Advisor Nunc Pro Tunc to April 9, 2010

HEARING re Motion and Supporting Memorandum of the Official Committee of Equity Security Holders for the Appointment of an Examiner Pursuant to Section 1104(c) of the Bankruptcy Code

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Interested Party

the other day. And it could certainly lead to strategic filings of motions for appointment of trustees just to defeat a motion for appointment of an examiner. So that is of no moment to my ruling on this motion.

As I have recently ruled orally, so you can't really rely on it, but I will follow myself. I do believe that 1104(c)(2) gives the Court some discretion, even if the debt level is reached, and the discretion is that the Court has the discretion to determine what appropriate investigation of the debtor should occur and that, if the Court determines that there's no appropriate investigation that needs to be conducted, the Court has the discretion to deny the appointment of an examiner.

The Courts have looked at various factors in determining whether an appropriate investigation is warranted. They include whether that investigation, that same investigation, has already been conducted by other parties. They have looked at whether the appointment of an examiner will increase costs and cause a delay with no corresponding benefit. Of course I've looked at the timing of the motion. I've looked at whether the motion is a litigation tactic, which includes the consideration of the timing, not just how soon it is in a case but whether it is timed such as to evidence a litigation tactic.

I think in this case it's a very close call. I don't

find that this is a litigation tactic, although it's been suggested that the shareholders are simply seeking to delay things while they replace management so that they can have -- or, excuse me, the directors -- board of directors, so that they can tank the settlement. I'll accept their motion as being -- as they state it: an effort to have an investigation conducted by an independent third party to determine whether or not the plan proposed by the debtor, or this global settlement referred to by the parties, is appropriate and whether, instead, prosecution of those claims would result in a greater recovery for the estate.

Notwithstanding that, reviewing the factors, I think it is clear that the motion has to be denied at this point. First, it is clear to me that this debtor has been investigated to death. And I'm sure that even the most experienced and talented examiner that the United States Trustee could appoint would not find any stone unturned. The investigations have been conducted not only by the debtor and the creditors' committee, but by -- the equity committee itself has done some investigation; the Office of Thrift Supervision; the FDIC; the government task force, including the U.S. Attorney for the Western District of Washington; the Department of Labor; the Department of Justice; the FBI; the IRS; the SEC; the Attorney General for the State of New York; the class action plaintiffs; Congress; the U.S. Treasury; and the President's Financial

Fraud Task Force have all taken a look at Washington Mutual. It is true that their investigations exceeded the scope of what this Court need concern itself with. They have talked about systemic problems. They have investigated possible criminal actions by the parties. In this case the Court is limited to, as the equity committee suggests, the value of the estates and how they will be distributed in this bankruptcy case.

I don't think it is fair to the creditors in this case to be saddled with the cost of an investigation into systemic problems, that would only benefit future parties but not benefit the parties in this case. In this case specifically, the debtor and the creditors' committee have investigated the specific assets owned by the debtor, or that the debtor claims it owns. The debtor has vigorously appeared in and prosecuted its position in several adversaries in this case, in addition to filing a claim in the FDIC receivership and prosecuting claims it has in that forum. All of that information should be available to the equity committee. And I don't want to hear about obstacles being placed in their path to getting full and open access to that information, whether it's documentary or interviews with the debtors' management or others who have conducted these investigations; and the same goes with the creditors' committee, who's been actively involved in all of this.

Again, the appointment of an examiner here really

would -- an examiner really would only have the task of reviewing what others have already done. I don't think there's any original investigation left to be done. So I think that's just a waste of assets.

Secondly, I think the equity committee is fully able to conduct the investigation that it seeks to have the examiner conduct. It has the benefit of Rule 2004, it has the benefit of the discovery rules, because there are contested matters presently and anticipated in which the equity committee could fully avail itself of that discovery. But, again, I'm strongly urging the committee and the debtor to provide all the information to the equity committee without testing the Court's patience with discovery motions.

The -- again, the appointment of a third party to conduct that investigation and to report to the Court its conclusion is no substitute for the adversarial process extant in bankruptcy court and the duty of the Court, after hearing the views of the opposing parties, to make a decision as to what assets the debtor owns, what the value of those assets is, whether a settlement is reasonable, in resolving a conflicting claim to those -- to ownership to those assets.

Finally, the timing of the motion. I don't think that this is a factor that I'll rely on in this case. I think that in other cases it's been evident that parties have been litigating for many, many months, and only at the last minute

when a party thought it was going to lose did it file the motion for a tactical reason. In this case, the equity committee is relatively new to this case, only since January, and I don't think that the timing was meant -- is too late to consider it, nor was it meant as a litigation strategy.

Let's see. I don't know whether -- I'm not going to accept the debtors' arguments or the committee's arguments regarding delay here being a negative. I'm not sure how quickly the debtor honestly can proceed with its proposed plan but, at any rate, I think there is sufficient time -- should be sufficient time for the equity committee to conduct whatever investigation it feels is relevant. So I will deny the motion.

MR. ROSEN: Your Honor, we have prepared a very short order that says "Ordered that the motion is denied. And it is further ordered that this Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this order." With that, may I approach the bench?

THE COURT: You may. All right, I'll enter that order.

MR. ROSEN: Thank you. That concludes this morning's agenda.

THE COURT: Well, before we conclude, where do we stand on the 2019? Did you send out a notice of a hearing on that?

Exhibit E

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	. Chapter 11
	. Case No. 22-11068 (JTD)
FTX TRADING LTD., *et al.*,	.
	.
	. Courtroom No. 5
	. 824 Market Street
Debtors.	. Wilmington, Delaware 19801
	.
	. Wednesday, January 11, 2023
. . . . .	. 9:00 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE JOHN T. DORSEY
CHIEF UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor:	Adam Landis, Esquire LANDIS RATH & COBB LLP 919 Market Street, Suite 1800 Wilmington, Delaware 19801
	Andrew G. Dietderich, Esquire James L. Bromley, Esquire Brian D. Glueckstein, Esquire Alexa J. Kranzley, Esquire SULLIVAN & CROMWELL LLP 125 Broad Street New York, NY 10004

(APPEARANCES CONTINUED)

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Transcription Company:	Reliable The Nemours Building 1007 N. Orange Street, Suite 110 Wilmington, Delaware 19801 Telephone: (302)654-8080 Email: gmatthews@reliable-co.com

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APPEARANCES (CONTINUED):

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For the Movants:	David Finger, Esquire FINGER & SLANINA, LLC 1201 North Orange Street Wilmington, Delaware 19801
For the Committee:	Kris Hansen, Esquire Erez Gilad, Esquire PAUL HASTINGS LLP MetLife Building 200 Park Avenue New York, New York 10166
For the Ad Hoc Committee of Non-US Customers:	Matthew Harvey, Esquire MORRIS, NICHOLS, ARSHT & TUNNELL LLP 1201 North Market Street Suite 1600 Wilmington, Delaware 19801
For Paradigm Operations:	Sidney Levinson, Esquire DEBEVOISE & PLIMPTON LLP 919 3rd Avenue New York, New York 10022

scope of the retentions encompasses work that might be done by an examiner. So we think that argument, sort of, dovetails with the examiner motion and it makes sense to have them both heard at the same time.

Our examiner motion has been on file since December the 2nd. So, obviously, has had more than enough time to address that. We recognize that committee counsel has not been -- was retained on, I believe, December the 20th, but nevertheless, you know, there has been a good amount of time to respond. So we would ask for that.

Absent in the alternative we would ask if Your Honor has a date. We too were concerned about February the 8th not being adequate time with it being scheduled at 1 p.m. So we were wondering if Your Honor has a date between the 20th, January 20th and the February the 8th that would have more time available then the 8th.

The other thing I would say is that, you know, the U.S. Trustee would need to get the reply on file three days -- three business days prior to the hearing. So we would -- given how long parties have had our motion we would like to have, at least, a week between when the objections are filed and when our reply is due.

If, for example, Your Honor was to say put the hearing on the 8th since our reply would be due February the 3rd we would want objections filed to January the 27th to

give us one week.

THE COURT: Okay. All right. I do think I need to -- the 20th doesn't work, I don't think, for this. It's too soon. There is outstanding discovery. If it hasn't already been issued it will be issued, I assume.

Are you taking any discovery?

MS. SARKESSIAN: I have received no discovery. I am trying to imagine what possible discovery there could be against the U.S. Trustee, but I have not received any.

We have not seen an objection, so we don't know who their witnesses are. We have no idea if they're, in fact -- Your Honor, the U.S. Trustees position is that this is mandatory under the code and, therefore, there is not a need to have any evidence. It's legally mandatory. Nevertheless, we understand that the parties may want to put on evidence, but we don't know who they plan to put on, what they plan to put on; we have no idea.

THE COURT: I think you're familiar with my position on the mandatory nature of the appointment of an examiner.

MS. SARKESSIAN: Yes, Your Honor.

THE COURT: For the record, I do not believe it's mandatory.

MS. SARKESSIAN: Yes.

THE COURT: Let's do this: I think the 8th -- I

want to make sure we have a full day. I am going to reschedule this for February 6th which is Monday of that week. We will start at 9:30 a.m. The debtors and the committee's responses will be due by the 25th. Then the Trustee will have until the 1st.

So you have a week, Ms. Sarkessian, for your reply.

MS. SARKESSIAN: Yes, Your Honor. Thank you.

THE COURT: Then we will have the hearing on the 6th. If there is a -- pretrial orders are always helpful for me. So if there is -- if we're going to have an evidentiary hearing on the 6th let's have a pretrial order by close of business on the 3rd. So 5 p.m. on the 3rd.

Mr. Bromley and Mr. Hansen, one, if you are going to take discovery of the U.S. Trustee, please, do that immediately so that Ms. Sarkessian knows that she needs to do some discovery work.

Ms. Sarkessian, in light of my view on the mandatory nature of the appointment of an examiner I don't know if that now opens up for you your desire to take discovery of the debtors, but if you do you should do that, obviously, as soon as possible.

MS. SARKESSIAN: Understood, Your Honor.

THE COURT: Did I miss anything? Did I cover all of the issues? Do I have all of the dates that we need for

Exhibit F

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

	.	Chapter 11
IN RE:	.	
	.	Case No. 20-12836 (JTD)
CRED INC., *et al.*,	.	
	.	Courtroom No. 5
	.	824 North Market Street
	.	Wilmington, Delaware 19801
	.	
Debtors.	.	December 18, 2020
. . . . .	.	9:30 A.M.

TRANSCRIPT OF TELEPHONIC SECOND DAY HEARING
BEFORE THE HONORABLE JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE

TELEPHONIC APPEARANCES:

For the Debtors: Scott Cousins, Esquire
COUSINS LAW LLC
Brandywine Plaza West
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- and -

James Grogan, Esquire
Mack Wilson, Esquire
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Audio Operator: Jason Spencer

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TELEPHONIC APPEARANCES (Continued):

For the Debtors:	G. Alexander Bongartz, Esquire Derek Cash, Esquire PAUL HASTINGS LLP 200 Park Avenue New York, New York 10166 - and - Austin Prouty, Esquire PAUL HASTINGS LLP 1117 S. California Avenue Palo Alto, California 94304
For Jaime Shiller:	David Silver, Esquire SILVER MILLER 11780 W Sample Road Coral Springs, Florida 33065
For the U.S. Trustee:	Hannah McCollum, Esquire Joseph McMahon, Jr., Esquire John Schanne, Esquire UNITED STATES DEPARTMENT OF JUSTICE OFFICE OF THE UNITED STATES TRUSTEE 844 King Street, Suite 2207 Lock Box 35 Wilmington, Delaware 19801
For UpgradeYa:	Matthew Pierce, Esquire LANDIS, RATH & COBB LLP 919 Market Street, Suite 1800 Wilmington, Delaware 19801
For Krzysztof Majdak, and Philippe Godineau:	Joseph Sarachek, Esquire THE SARACHEK LAW FIRM 101 Park Avenue, 27th Floor New York, New York 10178
For the Committee:	Joseph Evans, Esquire Timothy Walsh, Esquire Darren Azman, Esquire MCDERMOTT WILL & EMERY LLP 340 Madison Avenue New York, New York 10173

TELEPHONIC APPEARANCES (Continued):

For Thomas Arehart: Hollace Cohen, Esquire
Carl Neff, Esquire
FISHERBROYLES LLP
445 Park Avenue, Ninth Floor
New York, New York 10022

For Maple Partners LLC: Lucian Murley, Esquire
SAUL EWING ARNSTEIN & LEHR LLP
1201 North Market Street, Suite 2300
Wilmington, Delaware 19801

MATTERS GOING FORWARD:

Cash Management. Motion to Debtors to (A) Continue to Operate their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Continue to Perform Intercompany Transactions; (II) Granting Administrative Expense Status to Post Petition Intercompany Balances; (III) Waiving Requirements of Section 345(b) of the Bankruptcy Code; and (IV) Granting Related Relief [Docket No. 7, 11/08/20]

Ruling: Order Entered

Employee Wages. Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Pay Employee Obligations and (B) Continue Employee Benefit Programs, and (II) Granting Related Relief [Docket No. 11, 11/08/20]

Ruling: Order Entered

Motion to Extend. Debtors' Motion for Entry of Order Extending Time to File Schedules and Statements of Financial Affairs [Docket No. 67, 11/18/20]

Ruling: Order Entered

Bar Date Motion. Motion of Debtors, Pursuant to Bankruptcy Code Sections 105(a), 502, and 503 and Bankruptcy Rule 2002, for Entry of an Order (I) Fixing Deadline for Filing Proofs of Claim and (II) Approving Form and Manner of Notice Thereof [Docket No. 52, 11/17/20]

Ruling: 128

Bid Procedures Motion. Debtors' Motion for Entry of Orders (I) (A) Approving Bidding Procedures, (B) Scheduling an Auction and Sale Hearing and Approving Form and Manner of Notice Thereof, and (C) Approving Assumption and Assignment Procedures and Form and Manner of Notice Thereof; and (II) Authorizing (A) the Sale(s), Free and Clear of all Liens, Claims, Interests, and Encumbrances, and (B) Assumption and Assignment of Executory Contracts and Unexpired Leases [Docket No. 65, 11/18/20]

Ruling: Order Entered

MACCO Retention Application. Debtors' Application for Entry of an Order Authorizing Employment and Retention of MACCO Restructuring Group LLC as Financial Advisor for Debtors, Effective Nunc Pro Tunc to Petition Date [Docket No. 57, 11/17/20]

Ruling: Order Entered

Teneo Retention Application. Debtors' Application for Entry of an Order Authorizing Employment and Retention of Teneo Capital LLC as Investment Banker for Debtors, Effective Nunc Pro Tunc to November 16, 2020 [Docket No. 63, 11/18/20]

Ruling: Order Entered

Paul Hastings Retention Application. Debtors' Application for Entry of an Order Authorizing Employment and Retention of Paul Hastings LLP as Counsel to Debtors, Effective as of Petition Date [Docket No. 64, 11/18/20]

Ruling: Taken Under Advisement

Sonoran Capital Retention Application. Debtors' Motion for Entry of an Order (I) Authorizing Employment and Retention of Sonoran Capital Advisors, LLC to Provide Debtors a Chief Restructuring Officers and Certain Additional Personnel and (II) Designating Matthew Foster as Debtors' Chief Restructuring Officer [Docket No. 95, 12/1/20]

Ruling: Taken Under Advisement

Creditor List. Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors to File a Consolidated List of Debtors' 30 Largest Unsecured Creditors, (II) Authorizing Debtors to Serve Certain Parties by E-Mail, (III) Authorizing Debtors to Redact or Withhold Publication of Certain Personal Identification Information, and (IV) Granting Related Relief [Docket No. 6, 11/08/20]

Motion to Seal. Motion to File Under Seal Certain Confidential Information Pursuant to Order (I) Authorizing Debtors to File A Consolidated List of Debtors 30 Largest Unsecured Creditors, (II) Authorizing Debtors to Serve Certain Parties by E-Mail, (III) Authorizing Debtors to Redact or Withhold Publication of Certain Personal Identification Information On An Interim Basis, And (IV) Granting Related Relief [Docket No. 61, 11/18/20]

Ruling: Orders Entered

Motion to Convert. Motion of Krzysztof Majdak and Philippe Godineau for Entry of an Order Pursuant to 11 U.S.C. § 1112(b) (I) Dismissing the Cases; (II) Converting the Cases to a Chapter 7 Liquidation; or (III) Appointing a Chapter 11 Trustee [Docket No. 62, 11/18/20]

Ruling: 94

DEBTORS' WITNESS(s)

CHRISTOPHER WU

PABLO BONJOUR

MATTHEW FOSTER

And four, the benefits derived by the appointment of a trustee, balanced against the costs of that appointment.

See In Re Reserves Resorts Spa and Country Club, LLC, Case Number 12-13316, nineteen -- a 2013 decision by Judge Gross.

The evidence presented was that -- the evidence presented before me in this case raises serious questions about the conduct of the debtors' affairs pre-petition. However, the debtor has removed the pre-petition management of the company and replaced them with independent professionals, including an independent member of the board and the only board member, Mr. Lyons, having heard -- and appointed Mr. Lyons as the only board member.

Having heard the testimony of Mr. Lyons and the other professionals retained to run the debtors and market the company for sale, I am convinced of their independence. Although retained initially by prior management and equity holders, no evidence was established to question that they are, indeed, independent. Moreover, the Official Committee of Unsecured Creditors appointed in these cases have entered into a plan support agreement setting out a valid proposal for moving these cases forward.

Certain creditors and the U.S. Trustee, however, still express reservations about allowing these independent professionals to conduct the debtors' affairs, as they move

forward with a proposed plan. I disagree with those concerns.

However, I want to be perfectly clear that, if the two equity security holders take any actions to either replace Mr. Lyons as the independent director or try to dilute his control of the board by appointing additional members of the board without first seeking permission from the Court, I will immediate appoint a Chapter 11 Trustee. Therefore, for these reasons, I find that it would be inappropriate at this time to appoint a Chapter 11 Trustee.

As for the appointment of an examiner, this is a more difficult question. I disagree with the UST's position that the appointment of a -- of an examiner is mandatory. The language of -- the language of 1104(c) provides the Court with some discretion. The Court -- it says that the Court shall appoint an examiner to conduct such an investigation if the -- of the debtor as is appropriate. So the question becomes: Is it appropriate in this case?

The creditors' committee has taken the position that they are conducting an investigation, although I will note that they have just been appointed, and any investigation must be in its very early stages of this case. I'm also mindful of the fact that the -- some of the creditors of the company are distrustful of the situation and have concerns about the conduct of the previous management of

this company.

Therefore, I'm going to agree with Judge Glenn in In Re Residential Capital, LLC, 474 B.R. 112, 119-120 (S.D.N.Y. 2012), in which he recognized that, quote:

"The only dispute as to whether the creditors' committee should be permitted to conduct an investigation without an examiner being appointment" --

The creditors' committee is ably represented in these cases and no party questions the creditors' committee's professionals' ability to competently and expeditiously complete an investigation. Nonetheless, Judge Glenn determined in that case that appointment of an examiner was appropriate, and I will do the same here. I think appointment of an examiner to conduct an investigation of the pre-petition conduct of the debtors is appropriate.

And therefore, I will enter an order requiring that that be done. The parties should confer and submit an appropriate form of order.

And in the form of order, I want to make clear, I do not want any duplication of effort. Since I'm appointing an examiner to conduct an investigation, there's no need for the creditors' committee to conduct a parallel investigation. So I would not approve any fees associated with the creditors' committee conducting that investigation.

Are there any questions?

Exhibit G

unitUNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
	.	
	.	Case No. 18-10814 (CSS)
EV ENERGY PARTNERS, *et al.*,	.	
	.	Courtroom No. 6
	.	824 North Market Street
	.	Wilmington, Delaware 19801
	.	
Debtors.	.	May 16, 2018
. . . . .	.	10:00 A.M.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors: Brad Weiland, Esquire
Jeffrey Zeiger, Esquire
William Arnault, Esquire
Casey McGushin, Esquire
Travis Bayer, Esquire
KIRKLAND & ELLIS
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Chicago, Illinois 60654

- and -

Laura Davis Jones, Esquire
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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

APPEARANCES (Cont'd):

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For Ad Hoc Committee:	Philip Dublin, Esquire AKIN GUMP One Bryant Park Bank of America Tower New York, New York 10036
For EnerVest:	Alan Moskowitz, Esquire GIBSON DUNN 200 Park Avenue New York, New York 10166
For U.S. Trustee:	Hannan McCollum, Esquire OFFICE OF U.S. TRUSTEE 844 King Street Wilmington, Delaware 19801
For JPMorgan Chase	Elisha Graff, Esquire SIMPSON THACHER 425 Lexington Avenue New York, New York 10017

priority rule, because the unsecured creditors are not receiving more than they're entitled to. And I think it was definitely filed in good faith and none of the arguments, numerous arguments made in support, to say it wasn't filed in good faith, don't hold any water.

On 1126, I think the debtors are correct that they did not have to solicit equity in this case because equity is not receiving a distribution under the plan on account of its interests, because they're not entitled to anything. And the cases that deal with class-skipping, et cetera, aren't applicable, and there have been numerous cases in this district and, otherwise, that have allowed just this behavior.

What would have been accomplished by having the equity be a vote here? They probably would have voted "no." Almost certainly would have voted "no," and we would have been in a cram down, and we would have had a valuation hearing, and they would have found to be out of the money, and the absolute priority rule, with regard to equity, would have been satisfied, so it would have been fair and equitable, so it's just a waste of time.

With regard to the disclosure statement, I think, frankly, there's an argument to be made that equity that's not in the money doesn't have standing to object to a disclosure statement, because the whole point of the

disclosure statement isn't to generally inform the world of the facts of the case; it's to provide the investors with the information they need to know how to vote. If you don't vote, a disclosure statement is really irrelevant.

But even throwing that aside, I still think the disclosure statement contains more than enough information. It's already a telephone book, for those of us who remember what telephone books are, and, you know, there has to be a limit on what you have to put in a disclosure statement. I'd like to see shorter confirmation orders, shorter DIP orders, and shorter disclosure statements, all of which would be to the benefit of society as a whole. So, I'm not -- I think the disclosure statement here is more than adequate.

And, you know, there's really no reason to go back into transactions that occurred in 2014 and 2015 that just aren't relevant to the plan that's before the voters. This is a little -- kind of all over the place, but there's a lot of cover. There's a lot I didn't mention, but in all those instances and in all those arguments, I reject the equity holders' position and affirm the debtors'.

Real quick, on appointment of the examiner -- and this goes to the "there's no there there" -- you don't -- I don't believe, and I've said this in numerous cases and my colleagues have said it, that it's just mandatory to appoint an examiner, as long as someone asks for one. I think there

has to be an actual examination that needs to be done, an appropriate inquiry that needs to be pursued and I think the Movant in a motion to appoint an examiner has the burden of proof of establishing something, some reason that it would be helpful to appoint an examiner and I just -- I don't see anything here whatsoever to appoint an examiner.

Now, all this, of course, you know, it would certainly be better if there was more value here for the unsecured creditors, as well as equity. We can't -- the Court is powerless to create value out of thin air, and all I can do in connection with determining value is weigh the evidence as it's presented to me and do the best I can. And I may be wrong, and it may be a situation here where equity is entitled to more, but based on the evidence I have, I am sorry to say that I don't believe they are, and that they are fortunate to be getting the 5 percent that they're getting.

And it's interesting even though -- talking about fiduciary duties -- I mean, even though all the evidence indicated to the Board that this -- that equity was out of the money, this Board fought very, very hard to get some return to its equity holders, perhaps even breaching their fiduciary duties to their creditors in the process. But I think that that speaks volumes to the integrity of the Board in this situation and is another reason that it's clear to me that they have acted with robust corporate governance and

Exhibit H

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Case No. 08-10960(KG)
	.	
IDLEAIRE TECHNOLOGIES	.	
CORPORATION,	.	824 North Market Street
	.	Wilmington, DE 19801
	.	
	.	
Debtor.	.	June 13, 2008
. . . . .	.	4:03 p.m.

TRANSCRIPT OF EXAMINER MOTION
BEFORE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: Sullivan Hazeltine Allinson, LLC
By: WILLIAM D. SULLIVAN, ESQ.
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Holland & Knight, LLP
By: JOHN J. MONAGHAN, ESQ.
10 St. James Avenue
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APPEARANCES (Cont'd.):

For Majority Lenders/ DIP Lender:	Akin, Gump, Strauss, Hauer & Feld, L.L.P. By: SCOTT ALBERINO, ESQ. ABID QURESCHI, ESQ. 1333 New Hampshire Ave, NW Washington, DC 20036 Young Conaway Stargatt & Taylor, LLP By: ROBERT S. BRADY, ESQ. The Brandywine Building 1000 West Street 17th Floor Wilmington, DE 19801
For the U.S. Trustee:	Office of the U.S. Trustee By: DAVID L. BUCHBINDER, ESQ. J. Caleb Boggs Federal Building 844 King Street Suite 2313 Lockbox 35 Wilmington, DE 19801
For the Committee:	Saul Ewing LLP By: MARK MINUTI, ESQ. JEREMY WILLIAM RYAN, ESQ. 222 Delaware Avenue Suite 1200 Wilmington, DE 19801

TELEPHONIC APPEARANCES:

For Wells Fargo Bank:	Kelley Drye & Warren LLP By: JENNIFER CHRISTIAN, ESQ. 101 Park Avenue New York, NY 10178 Ropes & Gray, LLP By: ANNELIESE H. PAK, ESQ. 1211 Avenue of the Americas New York, NY 10036-8704

THE COURT: Good afternoon.

MS. CHRISTIAN: Good afternoon. We are counsel for Wells Fargo Bank National Association as Indenture Trustee and Collateral Agent for the debtors' 13 percent senior secured notes.

THE COURT: Yes.

MS. CHRISTIAN: Your Honor, we join in the Majority Secured Noteholder Group's objection, and respectfully request that the U.S. Trustee's motion for appointment of an examiner be denied or, alternatively, that the motion be adjourned until a sale process is complete.

THE COURT: Thank you.

MS. CHRISTIAN: Thank you.

THE COURT: Thank you for that. Well, I have read all of the submissions, a lot of the underlying cases. We have a very and unusually, I think, complete record in this case at this point. I even went back and read legislative history, and I am going to deny the motion for the appointment of the examiner.

I do take note of the fact that on the first day of this case Mr. Buchbinder stood here all alone virtually and heroically, I think, argued the points that have made the way now for a Creditors' Committee to step in and continue, I don't want to say necessarily the fight, but certainly, the investigation, and I think the one thing that's clear is it's

somewhat unclear whether or not from the cases Section 1104(c)(2) of the Code mandatorily requires the appointment of an examiner whereas here the debts exceed $5 million. There are some persuasive decisions on both sides.

In fact, in one case that I read I thought that was particularly well written, Judge Wedoff of the Northern District of Illinois in the In re: UAL case found that it was mandatory. But in this district the cases have almost consistently held otherwise. Judge Walsh in S.A. Telecommunications found that the provision is not mandatory. I don't think that it is mandatory based upon my reading of the legislative history, and just as the parties have pointed out, the language of the statute itself and, particularly, the as appropriate clause.

And I also noted that in another case we had a visiting judge, Judge Newsome, it was the AC&S case in which Judge Newsome, although he found that the appointment of an examiner in these circumstances is mandatory, he told the examiner that he wasn't going to do any work, and, in fact, I think he used the expression not a penny for the examiner.

So I'm not about to really undertake a futile act or appointment someone who is not going to be taking action, because we have, I think, highly competent counsel, and now I've learned a financial advisor -- highly competent financial advisor representing the Creditors' Committee and doing the

very investigation that an examiner would be doing under these circumstances, and I'm similarly persuaded by the fact that not only is an examiner appropriate here, but it probably would be inappropriate given the speed with which the case is progressing and the work that's already been done by the Committee, and the fact that negotiations are about to begin. I just think the record is just full, replete with evidence that the Committee's doing a very, very capable job.

In addition, I will also note that the Court recently, at the request of the debtor, appointed counsel for outside directors, and I think that may have some significance, and perhaps the Court will hear from the outside directors as to their views on the transactions.

And the bottom line is this. We're going to have a sale hearing. It's going to be a strenuous sale hearing, I suspect. And to the extent the Committee and any other interested parties have not been provided cooperation in their investigation, to the extent there hasn't been a very significant shopping of this, marketing of this company, all of that is going to make it much more difficult for the Court to approve a sale, and the Court's agenda, speaking of agendas, in this case is that there be a complete record upon which the Court is able to make a determination that the sale is fair. That will be happening, and, obviously, the more cooperation that there is with the Committee and the United States Trustee

Exhibit I

UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

Case No. 09-11786-CSS

- -x

In the Matter of:

VISTEON CORPORATION, et al.

Debtors.

- -x

United States Bankruptcy Court

824 North Market Street

5th Floor

Wilmington, Delaware

May 12, 2010

10:05 AM

B E F O R E:

HON. CHRISTOPHER S. SONTCHI

U.S. BANKRUPTCY JUDGE

ECR OPERATOR: LESLIE MURIN

HEARING re Motion for Relief from Automatic Stay Filed by Luther Gilford

HEARING re Seventh Omnibus Objection of Visteon Corporation and Its Affiliated Debtors to Proofs of Claim (Duplicate Note Claims, Duplicate Claims, and Cross-Debtor Duplicate Claims (Substantive))

HEARING re Eighth Omnibus Objection of Visteon Corporation and Its Affiliated Debtors to Proofs of Claim (Incorrect Debtor Claims (Non-Substantive))

HEARING re Ninth Omnibus Objection of Visteon Corporation and Its Affiliated Debtors to Proofs of Claim (Amended Claims and Equity Claims (Non-Substantive))

HEARING re Tenth Omnibus Objection of Visteon Corporation and Its Affiliated Debtors to Proofs of Claim (Claims to be Adjusted (Substantive))

HEARING re Debtors' Objection to Proofs of Claim Filed by Visteon UK Pension Trust Limited (as Trustee of the Visteon UK Pension Plan) and the Board of the Pension Protection Fund

HEARING re Motion of the Debtors for Entry of an Interim Order (i)Authorizing Use of Cash Collateral; (ii)Granting Adequate Protection to Pre-Petition Secured Lenders; and (iii)Scheduling Final Hearing

HEARING re Motion of Panasonic Electric Works Corporation of America for an Order Compelling Debtors to Assume or Reject Its Pre-Petition Contract

HEARING re Emergency Motion of the Official Committee of Unsecured Creditors for Leave to Conduct Discovery Pursuant to Fed. R. Bankr. P. 2004

HEARING re Motion for Order Authorizing the Official Committee of Unsecured Creditors to File Emergency Motion of the Official Committee of Unsecured Creditors for Leave to Conduct Discovery Pursuant to Fed. R. Bankr. P. 2004 Under Seal

HEARING re Debtors' Third Motion to Extend Their Exclusive Periods to File and Solicit Votes for Their Chapter 11 Plan

HEARING re Motion of the Official Committee of Unsecured Creditors to Terminate Debtors' Exclusive Periods to File and Solicit Votes for Their Chapter 11 Plan

HEARING re Motion of the Ad Hoc Equity Committee in Visteon Corporation for Order Directing the Appointment of Examiner Pursuant to Section 1104(c)(2) of the Bankruptcy Code

HEARING re Motion of Various Shareholders for an Order Appointing an Official Committee of Equity Security Holders

Transcribed by: Lisa Bar-Leib

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this phrase -- some judge did -- but this really is "crying examiner in a crowded room", and it should be denied. Thanks, Your Honor.

THE COURT: All right, anyone else? Mr. Bienenstock, reply?

MR. BIENENSTOCK: Yes, Your Honor. I'm delighted with what I heard, because the creditors' committee apparently feels that they can rewrite the Bankruptcy Code and argue to Your Honor that because the equity holders have competent counsel and financial advisors, they said, that's a defense to an examiner motion. No, that's a defense, perhaps, to a motion to establish a statutory committee. The Code doesn't have any balancing test, any defense that if parties are adequately represented, that that's a defense to the appointment of an examiner.

Similarly, Mr. Willett has asked the Court, what will the world think. What will others think? It doesn't matter. The Code doesn't say appoint an examiner when there's five million dollars of debt unless other people will think bad thoughts. We have a right. I'm tickled pink that my adversaries have felt the need to construct out of the clear blue sky defenses that don't exist. And I think what that tells the Court is that we're entitled to an examiner to investigate the things we asked for, and we hope the Court will grant them.

THE COURT: Thank you. Excuse me. All right, the issue, of course, before the Court, is whether to appoint an examiner, pursuant to the motion in front of the Court. And the statute which is applicable, of course, is 1104(c). "If the Court does not order the appointment of a trustee," which I have not, "then at any time before the confirmation ... on request of a party in interest ... and after notice and a hearing, the court shall order the appointment of an examiner to conduct such an investigation of the debtor as is appropriate, including" and then it goes on, "if such appointment is in the interests of creditors" equity holders, et cetera, "or the debtor's fixed, liquidated, unsecured debts ... exceed $5,000,000." It's a troubling -- well, troubling, it's a somewhat ambiguous statute notwithstanding the fact that it says "shall", because it immediately limits the scope of that "shall". I don't think it's true, and I think it would be an absurd result to find that in every case where the financial criteria is met and a party-in-interest asks, the Court must appoint an examiner. There has to be an appropriate investigation that needs to be done.

Now, it's -- until someone does an investigation, of course, you don't know whether an investigation really needed to be done or not. But at some point there has to be a level of smoke, if you will -- not a lot but more than none, more than just a whiff of smoke -- but some sort of indication, some

sort of allegation or facts that make the Court think in a whole that, hmm, somebody needs to look into this independently and tell the Court what's going on. It's easy in Lehman or Revco to figure out that somebody's got to figure this out. But not every case that has over five million dollars of nontrade needs an examiner.

This case does not need an examiner. We are in a good old fashioned brawl, all right? We all know it. And the prize is an automobile company -- excuse me, a parts -- well, an automobile manufacturer of parts -- with a nice healthy client. Kind of a rarity, but it's nice to have. And we're going to fight. There's going to be a fight. Well, let's get to it. And I don't think there's any reason to keep tiptoeing around it. Equity thinks they're in the money. They're going to come to confirmation and they're going to try to prove it. Mr. Willett's clients have an issue with what's on the table. They're going to come in and litigate it. The bondholders like what's on the table or support it; they're going to come in and litigate it. There are no hidden motivations, here. There are hidden agendas, here. I think this is just a good old fashioned fight over a debtor that has some value, if it's restructured. It's a good company with a bad balance sheet. That's what it looks like. Maybe that's wrong. Maybe it's a good company with a good balance sheet. But that's what confirmation is going to tell us.

Exhibit J

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
MAGNA ENTERTAINMENT CORP., *et al.*,	.	Case No. 09-10720(MFW)
Debtors.	.	April 20, 2010(10:37 a.m.) (Wilmington)
REDROCK ADMINISTRATIVE SERVICES LLC, RACING AND GAMING SERVICES, LTD., AMWEST ENTERTAINMENT, LLC, BETTOR RACING, INC.,D/B/A ROYAL RIVER RACING, AND THE ELITE TURF CLUB, N.V.,	.	
Plaintiffs,	.	
v.	.	Adv.Proc.No. 09-51155(MFW)
MAGNA ENTERTAINMENT CORP., PACIFIC RACING ASSOCIATION, INC., MEC LAND HOLDINGS (CALIFORNIA), INC.,GULFSTREAM PARK RACING ASSOC., INC., LOS ANGELES TURF CLUB, INC., AND THE SANTA ANITA COMPANIES, INC.,	.	
Defendants.	.	
MAGNA ENTERTAINMENT CORP.,	.	
Plaintiff,	.	
v.	.	Adv.Proc.No. 09-52212(MFW)
PA MEADOWS, LLC, PA MEZZCO, LLC, and CANNERY CASINO RESORTS, LLC,	.	
Defendants.	.	

ALAMEDA COUNTY AGRICULTURAL FAIR ASSOCIATION, *et al.*,	.	
Plaintiffs,	.	
v.	.	Adv.Proc.No. 10-50193(MFW)
MAGNA ENTERTAINMENT CORP, *et al.*,	.	
Defendants.	.	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY COURT JUDGE

Appearances:

For the Debtors:	Brian S. Rosen, Esq. Weil, Gotshal & Manges LLP
For Certain Equity Holders:	Donna Harris, Esq. Pinckney, Harris & Weidinger
For the Creditors Committee:	Kenneth Eckstein, Esq. Josh Brody, Esq. Kramer, Levin
For the U.S. Trustee:	Mark Kenney, Esq. U.S. Trustee's Office
For PNC Bank:	Michael Gallerizzo, Esq. Gebhart & Smith
For Florida DPBR:	Jason Powell, Esq. Ferry, Joseph
For Santa Anita:	Derek Abbott, Esq. Morris, Nichols, Arsht & Tunnell
For Certain Creditors:	Gregg Galardi, Esq. Skadden, Arps
For MI Developments:	Lee Attanasio, Esq. John Hutchinson, Esq. Sidley, Austin

For Texas Racing Commission:	Casey Roy, Esq. Attorney General's Office
For the Mayor & City Council:	David Sommer, Esq. Gallagher, Evelius & Jones
For MID:	Michael Burke, Esq.
For State of Maryland:	Greg Cross, Esq.
For FC Gulfstream Park:	Carl N. Kunz, III, Esq. Morris, James
For MRTEP:	Brian Esters, Esq. Abato, Rubenstein & Abato
For the Grand Prairie Sports Corp.	John Middleton, Esq. Haynes & Boone, LLP
For Faracon Capital:	David A. Fidler, Esq. Klee, Tuchen, Bogdanoff & Stern
For the Regents of Univ. of California:	Eric Behrens, Esq. University of California
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Proceedings recorded by electronic sound recording; transcript produced by transcription service.

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MS. HARRIS: If I may, Your Honor, the comments from counsel have been false. The truth of the matter is, is that the shareholders have been involved in this process for months and months and months by contacting Kramer, Levin directly in trying to be a part of that process. When the settlement was announced, was the first time that we realized that we needed serious valuation, and through the proper channels, we went to the Office of the U.S. Trustee first, attempted to contact that office, contact persons at Kramer, Levin to get things done, and when that was not permitted, the shareholders came and found an attorney because Your Honor said that a motion had to be filed, and we did that. We did all of that promptly. With respect to the plan confirmation, Your Honor, there is still an objection. We are still entitled to discovery, and I frankly find it very hard to believe that financing is going to end on April 30th if there's no confirmation hearing today. Well, two issues, one is if they can get me the documents by the end of this week and Your Honor's amenable, we can get a confirmation hearing on a little bit later. The second thing is, however, I find it very hard to believe that any financier is going to let this case drop just before the Preakness, which is when the money for the debtors, you know, we've got big money here for the debtors for the financiers just on that one day, and so, you know, if MID's going to say that they're not going to

finance it through the Preakness, then I think we have a different issue, which is a breach of fiduciary duty issue that really calls for an Equity Committee at that point.

THE COURT: Well, let me make this ruling on the motion for the appointment of an Equity Committee or in the alternative for appointment of an Examiner. I agree with the Committee and the debtors that this is just too late in the game for such a motion to be filed. It should have been filed more promptly. Clearly, at the time the settlement was announced, if the equity had a problem with that, they should have acted more promptly. With respect to the request for discovery, I'm going to reserve on that. I think we'll hear testimony today, and I think the shareholders who have filed an objection will have ample time to contest the debtors' and Committee's submissions on valuation and other issues, but I will not foreclose if we do not finish today the opportunity for some discovery. With respect to the Examiner, I will make the same ruling I did previously. I think that the Committee has acted in whatever role the Examiner would have been instructed to act, namely they have investigated the serious allegations regarding the interested parties and the secured lenders' position. I am fully aware of the extensive work done by the Committee in this regard, and that that was ultimately settled. I make no comment on the settlement because that's what I'll hear at the confirmation hearing.

But I think at this late date to appoint an Examiner to do the same thing would just be a waste of assets of the estate. With respect to the request to appoint an examiner just to do a valuation, again, I will hear the valuation testimony and the Equity Committee's objection to that, I assume, they will be cross-examining on that point, but at this point, I just don't think the appointment of an Examiner is warranted, although I do agree that the Bankruptcy Code Section, because of the amount of non-trade unsecured debt, would suggest it's mandatory, I think the Court does have discretion with respect to what the role of an Examiner would be, and since all of the roles that an Examiner would play in this case have already been fulfilled, I find it's a futile act and will not appoint an Examiner.

MS. HARRIS: Your Honor, simply with respect to the issue of the actions of the equity holders from the point that the settlement was announced, I do have a witness here who can tell the Court exactly what was done and how things proceeded before - in order to maybe enlighten the Court with respect to that issue, if the Court is so inclined, before making that ruling.

THE COURT: No, I think just based on the timing of it, I think too long of a delay has occurred. Okay?

MS. HARRIS: Thank you, Your Honor.

THE COURT: I do not foreclose any 503(b)(3) declaim

as suggested by the debtor to the extent the equity shareholders make a substantial contribution.

MR. ROSEN: Yes, Your Honor. With that, Your Honor, if I could turn to - I think it was, item 28 on the agenda, which is the plan itself. Your Honor, as you are very, very well aware, this has been a very long and winding road to get to this point in time in the case. This restructuring started on a pre-petition basis several years ago, including through the debtors' efforts to do something that has been referred to as the debt elimination plan, which was the sale of certain assets and the reduction of indebtedness, but that was unsuccessful. We went through several bridge loans on a pre-petition basis to try and get us to a certain point in time on a restructuring, and that ultimately proved to be unsuccessful, and when liquidity dried up, Your Honor, these Chapter 11 cases were commenced, and even then there had been many turns. If the Court will recall, there was an initial effort to finance MEC as a bridge loan to certain sales and certain sales processes, and when the Creditors Committee was formed, they sought to extend that sales process, and I think Mr. Eckstein argued on several occasions how additional time really needed to be had so that Miller Buckfire and all the professionals in the case could do their job to actively market the assets. Also, the Creditors Committee agreed with MEC and had their own views with respect to certain

Exhibit K

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	Chapter 11
ACandS, Inc,	
Debtor.	Bankruptcy #02-12687 (RJN)

Wilmington, DE
November 18, 2002
10:05 a.m.

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE RANDALL J. NEWSOME
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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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Indeed, the Committee represents all Unsecured Creditors in this case. The unsecured general trade debt is nominal, and as the Court has noted no separate Committee has been appointed. To appoint an Examiner with the broad powers that Traveler's seeks would be to reward Traveler's in a way that neither the plain language of the Code or its intent require, and allow Traveler's to use this statute to manipulate the process to further its goal to delay if not defeat its own day of reckoning. Thank you.

MR. OSTRAGER: Sixty seconds, Your Honor?

THE COURT: No. We'll stand in recess for a few minutes.

(Recess)

THE CLERK: All rise.

THE COURT: All right. I'm prepared to rule on the matter before me. This Chapter 11 case is before the Court pursuant to a Motion to Appoint an Examiner filed by Traveler's casualty & Insurance company pursuant to Section 1104(C) of the Bankruptcy Code. That statute states in pertinent part as follows. "If the Court does not order the appointment of a Trustee under this Section, then at any time before the confirmation of a plan, and on request of a Party-In-Interest or the United States Trustee, and after notice and a hearing, the Court shall order the appointment of an Examiner to conduct such an investigation of the Debtor as is

appropriate, including an investigation of any allegations of fraud, dishonesty, et cetera and so forth."

The facts before the Court are as follows. A number of transactions have been discussed by way of testimony here today that raise red flags under the avoiding powers of the Trustee, Sections 544 through 550. Those transactions, however, have been investigated first by forensic accountant hired by the pre-petition Committee in this case to investigate IREX and presumably the SPI spin, as well as the 2001 sale to Lancaster Acquisition of ACandS, or the ACandS assets. The transactions have been investigated quite obviously by Traveler's in quite extensive detail. They've taken depositions. They've taken depositions in the course of this proceeding as well, The Traveler's now asks that another investigation take place, even though they have said that the evidence is irrefutable that certain transactions that occurred were either fraudulent transfers and/or preferences. An Examiner investigating these transactions would almost certainly need the assistance of an attorney, and probably the assistance of an accountant if not a financial advisor and an accountant. In the meantime, the Creditors' Committee in this case has taken the quite clear position that they intend to investigate these transactions as well, thus making potentially four different investigations on the very same sets of transactions. This would appear to the Court to be

utter and complete waste of money as well as time, and completely contrary to the best interest, as far as I can tell, of the Creditor community as a whole who do not, other than Traveler's, support this motion, as well as a waste of the Debtor's meager assets.

The statute, as the In Re: pevco DSE case at 898 F. 2nd. 498, 6th Circuit (1990) does require where there is more than $5,000,000 of debt the appointment of an Examiner. To that extent the motion is granted. However, it is further ordered that the Examiner appointed by the U.S. Trustee is not to perform any task or take up any duty or in any way perform any work without further order of the Court. That order is to ensure that the Committee is allowed to proceed with its investigation, that the coverage action where the real stakes in this case lie is permitted to proceed, and that those matters be completed before putting yet another cop on the beat in this case. So if the U.S. Trustee can find someone to accept the appointment under those circumstances, I will sign an Order. But only under those circumstances. That does in fact appoint an Examiner. That's my disposition of this. Anybody have any questions?

MR. PERCH: Yes, Your Honor.

THE COURT: Okay, Mr. Perch.

MR. PERCH: Good afternoon, Your Honor. Frank Perch for the United States Trustee. Your Honor, the U.S. Trustee

is required in the statute to appoint an Examiner if the Court directs one to be appointed. And we will, of course, consult with all of the interested parties who wish to provide input regarding the appointment of the Examiner, as the statute requires. I would like to inquire of the Court, because it may be of assistance to the U.S. Trustee in this process, whether with respect to the Court's ruling that the Examiner is not permitted to perform any further duties until further order of the Court, would the Court entertain a petition from the Examiner who is appointed seeking leave to be authorized to perform such tasks? Or would the Court only hear from other parties with respect to authorizing the Examiner to do something?

THE COURT: I would be most -- especially now, at this point, I -- when I say they're not authorized to do anything, I mean anything other than get appointed. That's all that this person is going to do. It is as though they were just like the old days of having a stand-by Chapter 11 Trustee under old XI. This will be a stand-by Examiner who Hill not begin to function until the Court orders him to. There is not going to be one penny of fees that is spent by this Examiner of any kind. So does that answer your question?

MR. PERCH: I understand the Court's position, Your Honor. Yes, thank you.

THE COURT: And I don't anticipate that the Examiner